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**IN THE
COURT OF APPEALS OF INDIANA**

STACY HART,

Appellant-Petitioner,

vs.

STATE OF INDIANA,

Appellee-Respondent.

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No. 82A05-0712-PC-732

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-9403-CF-107

May 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Stacy Hart appeals from the denial of his petition for credit time. We affirm.

FACTS

On October 25, 1995, the trial court sentenced Hart to thirty-five years of incarceration following his conviction for Class A felony dealing in cocaine. (Appellant's App. 6). At the time, the trial court gave Hart credit for 228 days of pre-sentence incarceration. (Appellant's App. 6). On May 24, 1999, the State and Hart agreed to reduce his sentence to twenty years: fourteen years in the Department of Correction ("DOC"); one year in the Vanderburgh County Correctional Complex ("VCCC"); and five years on probation in the "DRUG INTENSIVE SUPERVISION PROGRAM[.]" Appellant's App. p. 39. On November 28, 2001, Hart was placed in the VCCC and, on February 13, 2002, declared eligible for electronic home detention. (Appellant's App. 37).

On March 8, 2002, the VCCC filed a petition for revocation of placement in the VCCC. (Appellant's App. 37). On September 24, 2002, the trial court revoked Hart's placement in the VCCC and probation and ordered that he serve the remainder of his twenty-year sentence in the DOC. (Appellant's App. 34). On September 9, 2003, this court affirmed the trial court's disposition of VCCC's petition to revoke. (Appellant's App. 32). On October 24, 2007, Hart filed a petition for credit time, which the trial court denied five days later. (Appellant's App. 30).

DISCUSSION AND DECISION

Hart contends that he is entitled to an additional 228 days of credit against his sentence by virtue of his 228 days of pre-sentence confinement. Specifically, Hart argues that, although he received credit for time served prior to sentencing, he is entitled to additional credit time pursuant to Indiana Code section 35-50-6-3 (1995), which provides as follows:

- (a) A person assigned to Class I earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing.
- (b) A person assigned to Class II earns one (1) day of credit time for every two (2) days he is imprisoned for a crime or confined awaiting trial or sentencing.
- (c) A person assigned to Class III earns no credit time.

In challenges to the denial of pre-sentence credit time, the Indiana Supreme Court has mandated the application of the following appellate presumption: “Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days.” *Robinson v. State*, 805 N.E.2d 783, 792 (Ind. 2004). In other words, in cases where the trial court only specifies the number of days spent in pre-sentence confinement, we will presume that the defendant has already received an equal amount of Class I credit time, unless he can establish otherwise.

The record before us indicates that Hart spent 228 days confined prior to sentencing, but it is silent on the question of additional credit time earned by virtue of his assignment to

either Class I or Class II. Pursuant to *Robinson*, then, we presume that Hart received 228 days of Class I credit as well. The burden now shifts to Hart to show that he was, in fact, denied 228 days of Class I credit to which he was entitled, and this he has failed to do. Quite simply, Hart points to no indications in the record that he was denied 228 days of Class I credit time earned prior to sentencing, and our examination has uncovered none. As such, Hart has failed to overcome the appellate presumption that he has received all of the credit time due to him.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.